

Document No. _____

KANSAS REGISTER
SUBMISSION FORM

Agency Number -- 710-01

Agency Name -- Kansas Department of Wildlife, Parks and Tourism

Agency Address - 1020 S. Kansas Ave., Suite 200
Topeka, Kansas 66612-1233

Title of Document -- Public Hearing

Desired Date of Publication - Nov 8, 2012

ITEMS SUBMITTED IN DUPLICATE

CERTIFICATION

I hereby certify that I have reviewed the attached documents, and that they conform to all applicable Kansas Register publication guidelines and to the requirements of K.S.A. 75-431, as amended. I further certify that submission of these items for publication is a proper and lawful action of this agency, that funds are available to pay the publication fees and that such fees will be paid by this agency on receipt of billing.

Christopher J. Tymeson
Liaison officer's typed name

Liaison officer's signature

Department Attorney
Title

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Phone

This space for Register office use only

Wildlife, Parks, and Tourism Commission

Notice of Public Hearing

A public hearing will be conducted by the Wildlife, Parks, and Tourism Commission at 7:00 p.m., Thursday, January 10, 2013 at Butler County Community College, Clifford Stone Community Room, 901 S. Haverhill Rd., El Dorado, Kansas, to consider the approval and adoption of proposed regulations of the Kansas Department of Wildlife, Parks, and Tourism.

A regulatory hearing on business of the Wildlife, Parks, and Tourism Commission will begin at 7:00 p.m., January 10 at the location listed above. There will be public comment periods at the beginning of the evening meeting for any issues not on the agenda and additional comment periods will be available during the meeting on agenda items. Old and new business may also be discussed at this time. If necessary to complete business matters, the Commission will reconvene at 9:00 a.m. January 11 at the location listed above.

Any individual with a disability may request accommodation in order to participate in the public meeting and may request the meeting materials in an accessible format. Requests for accommodation to participate in the meeting should be made at least five working days in advance of the meeting by contacting Sheila Kemmis, Commission Secretary, at (620) 672-5911. Persons with a hearing impairment may call the Kansas Commission for the Deaf and Hard of Hearing at 1-800-432-0698 to request special accommodations.

This 60-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on proposed administrative regulations.

All interested parties may submit written comments prior to the hearing to the Chairman of the Commission, Kansas Department of Wildlife, Parks, and Tourism, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612 or to sheila.kemmis@ksoutdoors.com if electronically. All interested parties will be given a reasonable opportunity at the hearing to express their views orally in regard to the adoption of the proposed regulations. During the hearing, all written and oral comments submitted by interested parties will be considered by the commission as a basis for approving, amending and approving, or rejecting the proposed regulations.

The regulations that will be heard during the regulatory hearing portion of the meeting are as follows:

K.A.R. 115-9-8. This permanent regulation establishes the requirements and exemptions for the migratory bird harvest information program. The proposed amendments would update the regulation to conform with current program practices as well as update the exemption requirements to conform with statutory changes from the past legislative session.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

K.A.R. 115-14-14. This permanent regulation establishes the requirements for taking,

banding and transporting raptors. The proposed amendment is necessary to conform with federal law related to possession of raptors and relates to banding and marking of captive bred raptors.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

Copies of the complete text of the regulations and their respective economic impact statements may be obtained by writing the chairman of the Commission at the address above, electronically on the department's website at www.kdwpt.state.ks.us, or by calling (785) 296-2281.

Gerald Lauber, Chairman

115-9-8. Migratory bird harvest information program; requirements, exemptions. (a) As used in this regulation, "migratory game bird" shall mean any wild duck, goose, merganser, crane, dove, rail, snipe, woodcock, or other migratory bird for which a hunting season is established in the state of Kansas.

(b) Each person hunting migratory game birds in the state of Kansas shall be required to complete a Kansas migratory bird harvest information ~~card~~ survey, as provided by the secretary.

(c) Upon completion of a Kansas migratory bird harvest information ~~card~~ survey, a harvest information program ~~stamp~~ permit shall be issued by the secretary or the secretary's designee to the person completing the ~~card~~ survey.

(1) Each person required to comply with subsection (b) shall be in possession of a valid harvest information program ~~stamp~~ permit issued to that person while hunting any migratory game bird within the state of Kansas.

(2) Each harvest information program ~~stamp~~ permit shall be validated by the signature of the ~~stamp~~ permit holder written ~~across the face of the stamp~~ in the signature block of the permit.

(3) ~~A~~ Each harvest information program ~~stamp~~ permit shall be valid from the date of issuance through June 30 following the date of issuance.

(4) A harvest information program ~~stamp~~ permit shall not be transferable.

(d) The provisions of subsection (b) shall not apply to the hunting of any migratory game bird by ~~any~~ either of the following:

(1) Tribal members on federal Indian reservations or tribal members hunting on ceded lands; or

(2) ~~a person, or a member of a person's immediate family domiciled with that person, on land owned by that person or on land leased or rented by that person for agricultural purposes; or~~

~~(3) a resident of this state who is less than 16 years of age or who is 65 or more years of age~~ not required by K.S.A. 32-919, and amendments thereto, to hold a hunting license.

(e) This regulation shall ~~take effect~~ be effective on and after ~~July 1, 1998~~ April 1, 2013.

(Authorized by and implementing K.S.A. 32-807, as amended by L. 2012, ch. 47, sec. 25;
effective July 1, 1998; amended P-_____.)

ECONOMIC IMPACT STATEMENT

K.A.R. 115-9-8. Migratory bird harvest information program; requirements, exemptions.

DESCRIPTION: This permanent regulation sets the requirements of the HIP program and the exemptions from participating. The proposed changes would update the regulation to conform with current program practices as well as update the exemption requirements to conform with statutory changes from the past legislative session.

FEDERAL MANDATE: None.

ECONOMIC IMPACTS: The proposed regulation is not anticipated to have any appreciable economic impact on the department, other agencies, small businesses or the public.

ALTERNATIVES CONSIDERED: None.

115-14-14. Falconry; taking, banding, transporting, and possessing raptors. (a) Each

person taking a raptor from the wild for falconry purposes shall possess a current, valid hunting license pursuant to K.S.A. 32-919, and amendments thereto, and meet the requirements for hunter education certification pursuant to K.S.A. 32-920, and amendments thereto.

(b) Each falconer shall apply for and receive a permit from the department before attempting to take a raptor from the wild in Kansas.

(c) Each capture device used to capture raptors shall have a tag attached showing the permittee's name, address, and current falconry permit number.

(d) The permittee shall acquire permission from the landowner or the person controlling any private land before taking or attempting to take any wild raptor for falconry purposes.

(e) Wild raptors may be taken for falconry purposes if the species is approved by the department to be taken by the permittee and is allowed under the level of falconry permit possessed by the permittee in accordance with K.A.R. 115-14-12.

(1) A permittee shall not intentionally take a raptor species that the permittee is prohibited from possessing by the permittee's classification level.

(2) If a permittee captures a prohibited bird, the permittee shall immediately release it.

(f) A permittee shall take no more than two raptors from the wild each year to use in falconry in accordance with the permit level limitations specified in K.A.R. 115-14-12. The take shall be further restricted by the following provisions:

(1) Passage and haggard raptors may be taken by apprentice falconers, general falconers, and master falconers year-round.

(2) Raptors less than one year of age may be taken only by a general falconer or master falconer and may be taken year-round.

(3) No more than two eyases may be taken by a general falconer or a master falconer per calendar year. At least one eyas shall be left in the nest when an eyas is taken.

An apprentice falconer shall not take an eyas raptor from the wild.

(4) The following raptors may be taken from the wild, but only during the specified stages of development:

(A) Red-tailed hawk (*Buteo jamaicensis*) in the eyas and passage stages;

(B) American kestrel (*Falco sparverius*) in all stages; and

(C) great horned owl (*Bubo virginianus*) in all stages.

(5) Any other species of raptor in the eyas or passage stage of development may be taken by general falconers and master falconers.

(6) The recapture of a falconry bird that has been lost by a falconry permittee shall not be considered to be the capture of a wild raptor to be counted against the annual limit.

(g) Except as provided by this subsection, no species designated by the United States or in K.A.R. 115-15-1 as endangered or threatened shall be taken from the wild.

(1) A general falconer or master falconer may obtain a permit to take one wild raptor listed by federal law as threatened for falconry purposes.

(2) (A) The permittee shall submit an application and receive a federal endangered species permit before taking the bird.

(B) The permittee shall submit an application and receive approval and a permit from the department before taking the bird.

(h) Each raptor taken from the wild shall always be considered a wild bird.

(i) Each raptor taken from the wild in a calendar year by a permittee and then transferred to a second permittee shall count as one of the raptors allowed to be taken by the first permittee who took the raptor from the wild. The raptor transferred to the receiving permittee shall not count against the limit of wild raptors that may be taken in the calendar year by the receiving permittee.

(j) Each raptor taken from the wild shall be reported as follows:

(1) The permittee who is present and takes possession of a wild raptor at the capture site shall file the required report information within 10 calendar days of the capture by submitting the information to the electronic database of the United States fish and wildlife service.

(2) Any permittee may enlist the assistance of another person to take a wild raptor if the permittee is at the exact location of the capture and takes immediate possession of the bird.

(3) Any permittee who does not take immediate possession of a wild raptor at the exact location of the capture may acquire a wild raptor from a general falconer or master falconer, as defined in K.A.R. 115-14-12, in accordance with the following reporting requirements:

(A) The general falconer or master falconer who takes the raptor from the wild shall report the capture in accordance with paragraph (j)(1).

(B) The permittee receiving the wild raptor from the general falconer or master falconer

shall report the transfer of the bird within 10 calendar days of the transfer by submitting the information to the electronic database of the United States fish and wildlife service.

(4) Any permittee who has a long-term or permanent physical impairment that prevents the individual from being present at the exact location of the capture and taking immediate possession of a wild raptor that may be used by the permittee for falconry purposes may acquire a bird by the following means:

(A) Any general falconer or master falconer, as defined by K.A.R. 115-14-12, may capture the wild raptor.

This capture shall not count against the general falconer's or master falconer's calendar-year limit for the take of wild raptors. However, this capture shall count against the calendar-year limit for wild raptors of the permittee with the long-term or permanent physical impairment.

(B) The permittee with the long-term or permanent physical impairment shall file the capture report in accordance with paragraph (j)(1).

(C) The permittee with the long-term or permanent physical impairment shall confirm the presence of the impairment and the need to report in accordance with this subsection at the time of application for the capture permit.

(k) A master falconer may be authorized by permit to possess not more than three eagles, including golden eagles, white-tailed eagles, or Steller's sea eagles, for falconry in accordance with the following provisions:

(1) Each eagle possessed shall count against the possession limit for the permittee.

(2) A golden eagle may be taken in a location declared by the wildlife services of the United States department of agriculture or in an area within a state that has been established as a livestock depredation area in accordance with the following provisions:

(A) An immature or a subadult golden eagle may be taken in a livestock depredation area while the depredation area is in effect.

(B) A nesting adult golden eagle, or an eyas from its nest, may be taken in a livestock depredation area if a biologist that represents the agency responsible for establishing the depredation area has determined that the adult eagle is preying on livestock.

(C) The permittee shall notify the regional law enforcement office of the United States fish and wildlife service of the capture plan before any trapping activity begins. Notification shall be submitted in person, in writing, or by facsimile or electronic mail at least three business days before the start of trapping.

(I) Any raptor wearing falconry equipment or any captive-bred raptor may be recaptured at any time by any permittee in accordance with the following provisions:

(1) The permittee may recapture the raptor whether or not the permittee is allowed to possess that species.

(2) The recaptured bird shall not count against the permittee's possession limit. This take from the wild shall not count against the capture limit for the calendar year.

(3) The permittee shall report the recapture to the department within five working days of the recapture.

(4) The disposition of any recaptured bird shall be as follows:

(A) The bird shall be returned to the person who lost it, if that person may legally possess the bird and chooses to do so. If the person who lost the bird either is prohibited from taking or chooses not to take the bird, the permittee who captured the bird may take possession of the bird if the permittee holds the necessary qualifications for the species and does not exceed the permittee's possession limit.

(B) The disposition of a recaptured bird whose legal ownership cannot be ascertained shall be determined by the department.

(m) Each goshawk, Harris's hawk (*Parabuteo unicinctus*), peregrine falcon (*Falco peregrinus*), or gyrfalcon (*Falco rusticolus*) taken from the wild or acquired from a rehabilitator by a falconry permittee shall be identified by one or more of the following means:

(1) The bird shall be banded with a black nylon, permanent, nonreusable, numbered falconry registration leg band from the United States fish and wildlife service. The bands shall be made available through the department. Any permittee may request an appropriate band before any effort to capture a raptor.

(2) In addition to the band specified in paragraph (m)(1), the permittee may purchase and have implanted in the bird a 134.2 kHz microchip that is compliant with the requirements of an international organization for standardization. All costs associated with the implantation of a microchip shall be the responsibility of the permittee.

(3) The permittee shall report the take of any bird within 10 days of the take by

submitting the required information, including the band number or the microchip information, or both, to the electronic database of the United States fish and wildlife service.

(4) The permittee shall report to the department the loss or removal of any black nylon, nonreusable leg band within five days of the removal or notice of loss.

(A)(i) When submitting the report, the permittee shall submit a request for a black, nylon, nonreusable leg band to the United States fish and wildlife service.

(ii) The permittee may purchase and implant a 134.2 kHz microchip that is compliant with the requirements of an international organization for standardization, in addition to using the black, nylon, nonreusable leg band for rebanding.

(B) The permittee shall immediately submit the required information relating to the rebanding or the implanting of a microchip by submitting the information to the electronic database of the United States fish and wildlife service.

(n) Each raptor bred in captivity ~~either~~ shall be banded with a seamless metal falconry registration band provided by the United States fish and wildlife service ~~or shall~~. In addition, any such raptor may have implanted a 134.2 kHz microchip that is compliant with the requirements of an international organization for standardization.

The permittee shall report to the department the loss or removal of any seamless band within 10 days of the removal or notice of loss.

(1)(A) When submitting the report, the permittee shall submit a request for a yellow, nylon, nonreusable leg band to the United States fish and wildlife service.

(B) The permittee may purchase and implant a 134.2 kHz microchip that is compliant with the requirements of an international organization for standardization, in addition to using the seamless leg band for rebanding.

(2) The permittee shall immediately submit the required information relating to the rebanding or the implanting of a microchip by submitting the information to the electronic database of the United States fish and wildlife service.

(o) A falconry registration band shall not be altered, defaced, or counterfeited. However, the rear tab on a falconry registration band used to identify a raptor taken from the wild may be removed and any imperfect surface may be smoothed if the integrity of the band and the numbering on the band are not affected.

(p) The falconry registration band requirement may be waived by the secretary and the removal of a registration band may be allowed in order to address a documented health or injury problem caused to a raptor by the registration band in accordance with the following provisions:

(1) The permittee shall be required to carry a copy of the exemption paperwork at all times while transporting or flying the raptor.

(2) A microchip compliant with the requirements of an international organization for standardization and provided by the United States fish and wildlife service shall be used to replace the registration band causing the health or injury problem on a wild-caught goshawk, Harris's hawk, peregrine falcon, or gyrfalcon.

(q) A wild-caught falcon shall not be banded with a seamless numbered band.

(r) Any permittee, with prior authorization, may take a wild raptor, including a wild raptor that has been banded with an aluminum band from the federal bird-banding laboratory of the United States fish and wildlife service, during the legal season using legal methods and equipment, in accordance with the following provisions:

(1) Each captured raptor that has any band, research marker, or transmitter attached to it shall be immediately reported to the federal bird-banding laboratory of the United States fish and wildlife service. The reported information shall include any identifying numbers, the date and location of capture, and any other relevant information.

(2) A peregrine falcon that is banded with a research band or has a research marking attached to the bird shall not be taken from the wild and shall be immediately released.

(3) A captured peregrine falcon that has a research transmitter attached to the bird may be kept by the permittee not more than 30 days if the federal bird-banding laboratory of the United States fish and wildlife service is immediately contacted after the capture. The disposition of the captured peregrine falcon shall be in accordance with the directions provided by the federal bird-banding laboratory or its designee.

(4) Any raptor, other than a peregrine falcon, that has a transmitter attached to it may be possessed by the permittee who captured the bird for not more than 30 days in order to contact the researcher, or the researcher's designee, to determine if the transmitter should be replaced.

(A) The temporary, 30-day possession of the bird shall not count against the permittee's possession limit for falconry raptors.

(B) If the permittee who captured the raptor wishes to possess the bird for falconry purposes, the disposition of the bird shall be at the discretion of the researcher and the secretary if the species of the bird is allowable under the classification level of the permittee and the permittee's possession of the captured bird does not exceed the established possession limit.

(s) Each raptor, including a peregrine falcon, that is captured and found with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird attached to it shall be reported to the department within five days of capture.

(1) Each such falconry raptor shall be returned to the person who lost the raptor.

(2) If the person who lost the bird is prohibited from possessing the bird or does not wish to possess the bird, the permittee who captured the bird may keep the bird if the permittee holds the necessary qualifications for the species and does not exceed the permittee's possession limit.

(3) If the permittee who captured the bird is prohibited from possessing the bird, the disposition of the bird shall be at the discretion of the secretary.

(4) The recaptured falconry bird shall not count against the possession limit or the calendar-year limit of wild birds that may be taken by the permittee during the time the recaptured bird is being held pending final disposition.

(t) Each raptor that is injured during trapping activities shall be handled in accordance with the provisions of this subsection. It shall be the permittee's responsibility to address any injury occurring to a raptor during trapping activities in one of the following ways:

(1) The permittee may take the raptor into possession and apply it to the permittee's

possession limit if the raptor is of a species allowed to be possessed and the permittee's possession limit is not exceeded.

(A) The take shall be reported in accordance with subsection (j).

(B) The raptor shall be treated by a veterinarian or a permitted wildlife rehabilitator. The cost for the care and treatment of the raptor shall be the responsibility of the permittee.

(2) The raptor may be turned over directly to a veterinarian, a permitted wildlife rehabilitator, or a department employee, and the raptor shall not be counted against the permittee's allowable take or possession limit. The permittee shall be responsible for the costs relating to the care and rehabilitation of the bird.

(u)(1) The permittee shall report each raptor that dies or is acquired, transferred, rebanded, implanted with a microchip, lost to the wild and not recovered within 30 calendar days, or stolen by submitting the information to the electronic database of the United States fish and wildlife service.

(2) In addition to submitting the report required in paragraph (u)(1), the permittee shall file a report of the theft of a raptor with the department and the appropriate regional law enforcement office of the United States fish and wildlife service within 10 calendar days of the theft.

(3) The permittee shall keep copies of all electronic database submissions documenting the take, transfer, loss, theft, rebanding, or implanting of microchips of each falconry raptor for at least five years after the bird has been transferred, released to the wild, or lost, or has died.

(v) The intentional release to the wild of any falconry raptor shall be in accordance with the following requirements:

(1) A species of raptor that is not native to Kansas shall not be released to the wild. Any such bird may be transferred to another falconry permittee if the permittee receiving the bird is authorized to possess the age and species of raptor and the transfer does not exceed the possession limit of the permittee receiving the bird.

(2) Any species of raptor that is native to Kansas and is captive-bred may be released to the wild according to the following requirements:

(A) The permittee shall obtain the department's permission to release the bird to the wild before the actual release. The time of year and the location where the release shall take place shall be specified by the department.

(i) The release of a raptor on department lands or waters shall meet the requirements of K.A.R. 115-8-12.

(ii) The permittee shall acquire verbal permission from the landowner or person in control of the private land before the release of the raptor.

(B) The permittee shall remove any tag, transmitter, or nonreusable falconry band, if present, before release. All falconry identification bands, tags, or markers shall then be surrendered to the department within 10 calendar days of the release.

(C) The permittee shall report the release of the bird within 10 calendar days of the release by submitting the required information to the electronic database of the United States fish

and wildlife service.

(3) Any species of raptor that is native to Kansas and was taken from the wild may be released to the wild according to the following requirements:

(A) The permittee may release the bird to the wild year-round.

(i) Each release of a raptor on department lands or waters shall meet the requirements of K.A.R. 115-8-12.

(ii) The permittee shall acquire verbal permission from the landowner or person in control of the private land before the release of the raptor.

(B) The permittee shall remove any tag, transmitter, or nonreusable falconry band, if present, before the release. All falconry identification bands, tags, or markers shall then be surrendered to the department within 10 calendar days of the release.

(C) The permittee shall report the release of the bird within 10 calendar days of the release by submitting the required information to the electronic database of the United States fish and wildlife service.

(4) No hybrid raptor, as defined in K.A.R. 115-14-11, shall be intentionally released to the wild permanently.

(5) Hacking, which means temporarily releasing a falconry raptor to the wild for conditioning, shall be permissible.

~~This regulation shall be effective on and after December 31, 2012.~~ (Authorized by and implementing K.S.A. 32-807, as amended by L. 2012, ch. 47, sec. 25; effective Dec. 31, 2012;

amended P-_____.)

ECONOMIC IMPACT STATEMENT

115-14-14. Falconry; taking, banding, transporting, and possessing raptors.

DESCRIPTION: This administrative regulation details taking, banding, transporting and possessing raptors. The proposed amendment is necessary to conform with federal law related to possession of raptors and relates to banding and marking of captive bred raptors.

FEDERAL MANDATE: The practice of falconry and the management of raptors as migratory species is governed by the U.S. Fish and Wildlife Service. Any state falconry program must be approved by the USFWS and must operate within federal limits. Kansas has had a federally-approved program since 1988 and moved from a dual management system to a state-only managed system with federal oversight this year.

ECONOMIC IMPACT: The proposed regulation is not anticipated to have any appreciable economic impact on the department, other agencies, small businesses or the public.

ALTERNATIVES CONSIDERED: None.